

A **UNIVERSITI KEBANGSAAN MALAYSIA v. EDGENTA FACILITIES
MANAGEMENT SDN BHD**

HIGH COURT MALAYA, KUALA LUMPUR
ARZIAH MOHAMED APANDI JC
[SUIT NO: WA-22NCVC-514-08-2020]
B 25 MARCH 2025

C **Abstract** – (i) *When a contractual dispute is premised on the terms of a contract, the contract itself as a whole document must be considered including the factual matrix and background circumstances, business common sense, and commercial purposes. An objective approach must be taken to determine the parties' intentions; (ii) When a party seeks to challenge penalty calculations, they must provide timely objections and substantial evidence, not merely assert disagreement after penalties have been imposed. When evaluating penalty provisions, the court takes a practical approach to contractual interpretation, considering both the literal wording and the functional commercial context.*

E **CONTRACT:** *Breach – Contractual dispute – Terms of agreement – Agreement between university and facilities management company for latter to provide workforce, consumable and all linen-related services to university medical centre – Whether there were specific terms regarding linen supply requirements – Whether company contractually obligated to supply new linens rather than reused linens – Claim for penalty payment demands – Whether penalty calculation method and amount valid – Whether there were wrongful deductions – Whether there was violation of contract*

G This case was a contractual dispute between Universiti Kebangsaan Malaysia ('plaintiff'), a public university, and Edgenta Facilities Management Sdn Bhd ('defendant'), a facilities management company. The case concerned a laundry services contract worth RM17,242,737.48 for the plaintiff's hospital facility, Pusat Perubatan Universiti Kebangsaan Malaysia (PPUKM). The plaintiff executed a three-year contract with the defendant dated 1 September 2016. The contract, valued at RM17,242,737.48, required the defendant to provide workforce, consumables, and all linen-related services for PPUKM, the university's medical centre. The contract period ran from 1 September 2016 to 31 August 2019, with specific terms regarding linen supply requirements detailed in Dokumen 8 and 8A of the Technical Specification Schedule ('contract'). The defendant was required to maintain a minimum of five par level for each type of linen, comprising: one set for daily use by consumers, one set being washed, one set in consumer storage, and two sets in linen storage. The contract specifically stipulated that the defendant must

demonstrate it had established these required par levels within three months from the contract commencement date. The plaintiff claimed that the defendant failed to consistently achieve these levels despite having received a three-month time extension (from September 2016 to February 2017) to fully establish the required inventory, as evidenced by a letter dated 27 October 2016, in which the plaintiff approved the defendant's request to extend the deadline for meeting specifications. The plaintiff contended that the defendant's failure to maintain adequate linen supplies violated cl. 4.3 of Dokumen 8, which provided penalties for insufficient linen quantities. Based on this provision, the plaintiff calculated penalties totalling RM3,996,344.47 from 1 March 2017 to 31 August 2017, applying a formula that multiplied the number of deficient linen items by the price per item by the number of days deficient. The plaintiff argued this calculation method followed the contract's prescribed formula for deficiencies (specified as 'number of deficient linen items price per unit'). The plaintiff further argued that the defendant had refused to pay these penalties despite formal demands, including a demand letter dated 27 November 2018. The defendant strongly denied breaching the contract and presented multiple defences: (i) they claimed to have supplied sufficient linens meeting the five par level requirements, providing a total of 122,540 linen items comprising: 50,582 new PPUKM-specification linens, 47,879 existing PPUKM-specification linens, and 24,079 linens meeting KKM's specifications; (ii) during the mobilisation period (September-November 2016), no penalties should apply as this was the agreed set-up phase; and (iii) the plaintiff unilaterally increased par level requirements in the e-Laundry system without proper notification, thereby artificially creating deficiencies. The principal issues that arose were (i) whether the defendant was contractually obligated to supply new linens rather than reused linens; (ii) whether the plaintiff's penalty calculation method and amount were valid; and (iii) whether the defendant's counterclaim for allegedly wrongful deductions had merit.

Held (allowing plaintiff's claim):

(1a) When the dispute is premised on the terms of the contract, the contract itself as a whole document must be considered including the factual matrix and background circumstances, business common sense, and commercial purpose. An objective approach must be taken to determine the parties' intentions. In sequence of orders, the defendant's own letters of correspondence acknowledged their obligation to supply new linens. The minutes of the meetings before the execution of the contract showed that the parties understood that new linens were required. The defendant's repeated acknowledgments of the obligation to supply new linens in correspondence with the plaintiff constituted compelling evidence of the parties' common understanding. The defendant never clarified or even enquired if they were to supply only new linens or a

- A mix of new and used linen. Only after the plaintiff levied the penalty payment demands did the defendant raise this issue of new linen, creating the afterthought. It was the parties' common and agreed intention that the linen supplied should be new. (paras 25, 26, 27, 47, 48 & 49)
- B (1b) Moreover, the defendant did not bring their main witness, Tun Masri Abu Bakar, who signed off on their letters acknowledging the new linen requirements. Section 114(g) of the Evidence Act 1950 would be invoked since no reason was given for the defendant not to call him to the stand. As such, the unfavourable outcome could be reasonably
- C invoked for their failure to bring him. Ample evidence had been established by the plaintiff that both parties intended and understood that new linens were required and that the defendant's own conduct and correspondence supported this interpretation. The business commenced with the sense and commercial purpose of requiring new linens and not
- D used ones. The defendant had breached the contract by failing to supply new linens as required. (paras 28, 29, 30 & 86)
- (2) When a party seeks to challenge penalty calculations, they must provide timely objections and substantial evidence, not merely assert disagreement after penalties had been imposed. When evaluating penalty
- E provisions, the court takes a practical approach to contractual interpretation, considering both the literal wording and the functional commercial context. As to the issue of the penalty charges, this court agreed with the plaintiff's argument that the contractual interpretation of the phrase 'until the five par requirement is fulfilled' in cl. 9 of
- F Dokumen 8 logically incorporated a time element, supporting the plaintiff's inclusion of 'days delayed' in their formula. The penalty calculation served the legitimate commercial purpose of encouraging timely compliance with contractual obligations. The plaintiff's calculation was reasonable, properly documented, and consistent with
- G contractual terms. The defendant failed to fulfil this obligation by not supplying the required quantity of new linens within the stipulated timeframe, materially breaching the contract. The penalty calculation served the legitimate commercial purpose of encouraging timely compliance with contractual obligations. The calculation methodology was reasonable, transparent and consistent with commercial practice.
- H The plaintiff was entitled to impose the penalty as calculated. (paras 59 - 67)
- (3) The issue of wrongful deduction was a significant dispute in the counterclaim where the defendant contended that the plaintiff
- I wrongfully deducted payments for 'daily owing linens'. The plaintiff's position was that the contract required new linens meeting PPUKM specifications. The defendant failed to supply five par level of new

linens by the extended deadline (28 February 2017). As such, the plaintiff was entitled to impose penalties as per cl. 4.3 of Document 8, calculated as: quantity of linen x price per sheet x number of days delayed. The court's analysis of the wrongful deductions issue showed the plaintiff's arguments were supported by the evidence. The plaintiff was contractually entitled to increase linen requirements based on hospital needs, as evidenced by multiple provisions in the contract. The defendant's contention that it was unaware of the requirement increase was not credible since they had full access to the e-Laundry system, which tracked requirements in real time. The timing of the counterclaim suggested that it was a tactical response rather than a genuine grievance. In light of these evidentiary deficiencies and inconsistencies, the defendant failed to discharge its burden of proof in establishing its counterclaim. (paras 73-86)

Case(s) referred to:

- Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd* [2010] 1 CLJ 269 FC (*refd*)
Cavendish Square Holding BV v. El Makdessi; ParkingEye Ltd v. Beavis [2016] 2 All ER 519 (*refd*)
CIMB Bank Bhd v. Anthony Lawrence Bourke & Anor [2019] 2 CLJ 1 FC (*refd*)
Cubic Electronics Sdn Bhd (In Liquidation) v. MARS Telecommunications Sdn Bhd [2019] 2 CLJ 723 FC (*refd*)
Goss v. Lord Nugent [1833] 5 B & Ad 58 (*refd*)
He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal [2020] 7 CLJ 271 FC (*refd*)
Johor Coastal Development Sdn Bhd v. Constrajaya Sdn Bhd [2009] 4 CLJ 569 FC (*refd*)
Kluang Wood Products Sdn Bhd & Anor v. Hong Leong Finance Bhd & Anor [1999] 1 CLJ 1 FC (*refd*)
Lau Hee Teah v. Hargill Engineering Sdn Bhd & Anor [1979] CLJU 40; [1979] 1 LNS 40 FC (*refd*)
Malaysian Motor Insurance Pool v. Tirumeniyar Singara Veloo [2019] 10 CLJ 731 FC (*refd*)
Miller v. Cannon Hill Estates Ltd [1931] 2 KB 113 (*refd*)
Otto v. Bolton [1936] 2 KB 46 (*refd*)
Selva Kumar Murugiah v. Thiagarajah Retnasamy [1995] 2 CLJ 374 FC (*refd*)
Selvaduray v. Chinniah [1939] CLJU 107; [1939] 1 LNS 107 SC (*refd*)
Sharikat Pernborong Pertanian & Perumahan v. Federal Land Development Authority [1969] CLJU 172; [1969] 1 LNS 172 HC (*refd*)
Silver Corridor Sdn Bhd v. Gallant Acres Sdn Bhd & Anor [2016] 7 CLJ 823 FC (*refd*)
SS Maniam v. The State of Perak [1956] CLJU 112; [1956] 1 LNS 112 HC (*refd*)
Tan Chong & Sons Motor Company Ltd v. Yang Chin Lang [1966] CLJU 193; [1966] 1 LNS 193 HC (*refd*)
Tindok Besar Estate Sdn Bhd v. Tinjar Co [1979] CLJU 119; [1979] 1 LNS 119 FC (*refd*)
UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 9 CLJ 785 FC (*refd*)
Wong Sin Chong & Anor. v. Bhagwan Singh & Anor [1993] 4 CLJ 345 SC (*refd*)
Zuraida Kamaruddin v. Saifuddin Nasution Ismail (Saman Sebagai Setiausaha Agung, Parti Keadilan Rakyat Untuk Dan Bagi Pihak Parti Keadilan Rakyat) [2025] 2 CLJ 942 CA (*refd*)

A Legislation referred to:

Contracts Act 1950, s. 75
Evidence Act 1950, ss. 91, 92(b), 114(g)

For the plaintiff - Barvina Punmusamy & Nur Sabrina Ahmad Kamal; M/s Jayadeep Hari & Jamil

B For the defendant - Habizan Rahman Habeeb Rahman, Sarina Alwi & Anis Afina Hassan Sanusi; M/s Rahman Rohaida

Reported by Suhainah Wahiduddin

JUDGMENT

C Arziah Mohamed Apandi JC:

Introduction

D [1] This case is a contractual dispute between Universiti Kebangsaan Malaysia (the plaintiff), a public university, and Edgenta Facilities Management Sdn Bhd (the defendant), a facilities management company. The case concerns a laundry services contract worth RM17,242,737.48 for the plaintiff's hospital facility, Pusat Perubatan Universiti Kebangsaan Malaysia (PPUKM).

E [2] The contract, executed on 24 October 2016, required the defendant to provide laundry services, including the supply of linens at a "five par" level. The core dispute revolves around whether the defendant was contractually obligated to supply new linens rather than used or recycled linens, and whether the defendant fulfilled this obligation by the extended deadline of 28 February 2017.

F [3] The plaintiff claims that the defendant failed to supply the required quantity of new linens by the deadline, resulting in a penalty claim of RM3,996,344.47 calculated according to a formula based on the amount of missing linens, the price per sheet, and the number of days delayed. The plaintiff's claim is grounded in cl. 4.3 of document 8 of the contract.

G [4] The defendant denies this obligation, contending that the contract did not explicitly require new linens, and that they fulfilled their obligations by supplying a combination of new linens, existing linens from the previous vendor, and linens from Kementerian Kesihatan Malaysia (KKM). The defendant further argues that the plaintiff's penalty calculation is incorrect because it improperly includes a "number of days delayed" factor.

H [5] Additionally, the defendant has filed a counterclaim of RM3,643,672.25 for allegedly wrongful deductions made by the plaintiff for daily "owing linens" (not supplied as required).

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Parties Claims

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Background And Contract Details

[6] The plaintiff executed a three-year contract with the defendant (No. PPUKM/P/78/2016) dated 1 September 2016. The contract, valued at RM17,242,737.48, required the defendant to provide workforce, consumables, and all linen-related services for PPUKM, the university's medical centre. The contract period ran from 1 September 2016 to 31 August 2019, with specific terms regarding linen supply requirements detailed in Dokumen 8 and 8A of the Technical Specification Schedule ('the contract').

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Contractual Requirements And Alleged Breaches

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[7] According to cl. 4.1 of Dokumen 8, the defendant was required to maintain a minimum of five par level for each type of linen, comprising: one set for daily use by consumers, one set being washed, one set in consumer storage, and two sets in linen storage. The contract specifically stipulated that the defendant must demonstrate it had established these required par levels within three months from the contract commencement date. The plaintiff claims that the defendant failed to consistently achieve these levels despite having received a three-month time extension (from September 2016 to February 2017) to fully establish the required inventory, as evidenced by a letter dated 27 October 2016, in which the plaintiff approved the defendant's request to extend the deadline for meeting specifications.

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Plaintiffs Specific Claims And Penalty Calculations

[8] The plaintiff contends that the defendant's failure to maintain adequate linen supplies violates cl. 4.3 of Dokumen 8, which provides penalties for insufficient linen quantities. Based on this provision, the plaintiff calculated penalties totalling RM3,996,344.47 from 1 March 2017 to 31 August 2017, applying a formula that multiplies the number of deficient linen items by the price per item by the number of days deficient. The plaintiff argues this calculation method follows the contract's prescribed formula for deficiencies (specified as 'number of deficient linen items x price per unit'). The plaintiff further argues that the defendant has refused to pay these penalties despite formal demands, including a demand letter dated 27 November 2018.

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Specific Linen Categories In Dispute

[9] There are specific reference deficiencies in the linen categories: (1) OT Consultant shirts and pants from September 2016 to July 2017; (2) Surgical Gowns from September 2016 to September 2017; and (3) various other linens that failed to meet the one par level requirement from January 2018 to July 2019. The plaintiff claims it regularly monitored through an e-Laundry system that accurately tracked linen inventory levels at user locations, providing documentary evidence of consistent shortfalls below contracted requirements.

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A *The Defence Arguments*

- [10] The defendant strongly denies breaching the contract and presents multiple defences. First, they claim to have supplied sufficient linens meeting the five par level requirements, providing a total of 122,540 linen items comprising: 50,582 new PPUKM-specification linens, 47,879 existing PPUKM-specification linens rented from the previous contractor (Time Network Sdn Bhd) ('Time'), and 24,079 linens meeting KKM's specifications. Second, the defendant argues that during the mobilisation period (September-November 2016), no penalties should apply as this was the agreed setup phase. Third, they contend that the plaintiff unilaterally increased par level requirements in the e-Laundry system without proper notification, thereby artificially creating deficiencies.

Fabric Specification Disputes And Supply Challenges

- [11] A significant part of their defence concerns fabric specification changes. They argue that the originally specified intercooler drill fabric for OT consultant uniforms (items 66 and 67 in Dokumen 8A) was unavailable in the market. When the defendant informed the plaintiff about this issue, the plaintiff approved a change to the TR Viscose fabric on 18 April 2017. Similarly, the defendant claims that the plaintiff requested surgical gowns with "barrier fabric" specifications contrary to document 8A, which caused additional delays. The defendant contends that these fabric modification approvals effectively reset the delivery timeline, as manufacturing requires 30-90 days after material approval, making penalty calculations for these periods inappropriate.

F Counterclaim For Penalty Repayments

- [12] The defendant has filed a counterclaim seeking repayment of RM1,110,539.50 in penalties imposed during September 2016 to September 2017, and RM2,533,132.75 for penalties imposed from January 2018 to July 2019. A detailed monthly breakdown of penalties was provided, arguing that they were wrongfully imposed and represent an "unjust enrichment" by the university. Furthermore, the defendant contends that under cl. 44 of the contract, maximum penalties are capped at 10% of the contract value (approximately RM1,724,273.74), suggesting that the plaintiff's penalties exceed this contractual limit and should be returned.

H Dispute Over Penalty Formula Interpretation

- [13] A central dispute concerns the penalty calculation method. While the plaintiff relies on cl. 4.3's formula (linen quantity x price per unit), the defendant argues this formula shouldn't include multiplying by the number of days in deficit. The defendant points to a newer tender document (UKM/BENKKL/HCTM/TDR/PKHD-2019(08)) issued by the plaintiff in March 2019 that allegedly uses a different formula, which they interpret as evidence

that the plaintiff's current formula is inappropriate. The plaintiff counters that the new tender document is irrelevant to the present contract and has no bearing on the dispute.

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E-Laundry System And Record-Keeping Disputes

[14] The defendant challenges the reliability of the plaintiffs e-Laundry system, which was used to track linen quantities and calculate deficiencies. They claim the plaintiff increased the recorded par-level requirements in this system without notification, causing artificial deficiencies. Representatives of both parties met in June and July 2019 to discuss these e-Laundry data collection methods, but no resolution was reached. The defendant argues that this system manipulation falsely inflated the appearance of contract violations and the resulting penalties.

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Parties Positions On Contract Interpretation

[15] The plaintiff maintains that only the terms in the contract PPUKM/P/78/2016 are binding for this claim, rejecting references to other tenders or contracts. It is argued that cl. 4.4 (regarding general delays) and cl. 4.3 (regarding insufficient par levels) of Dokumen 8 address different types of contractual breaches; therefore, different penalty calculations apply. The defendant contends that the penalties imposed exceed the contract's 10% maximum penalty cap and represent a misapplication of the contract terms. Both parties accuse each other of raising "afterthoughts" designed merely to offset liability rather than presenting legitimate contractual interpretations.

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Issues

[16] The court has been tasked to answer the issues on – (i) whether the defendant breached contractual terms in supplying linens according to specifications; (ii) whether any proven breach justifies the plaintiff imposing penalties for failures/delays in linen supply; (iii) whether the plaintiff is entitled to RM3,996,344.47 or another amount as determined; (iv) whether the plaintiff can impose penalties for insufficient daily linen supply during specific periods of September-November 2016 (mobilisation period), OT consultant uniforms (September 2016-July 2017), OT surgical gowns (September 2016-September 2017), linens below par level (January 2018-July 2019); (v) whether the defendant can claim return of penalties for insufficient daily linens (September 2016-September 2017) amounting to RM1,110,539.50; and (vi) Whether the defendant can claim the return of penalties for insufficient daily linens (January 2018- July 2019) amounting to RM2,533,132.75.

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[17] The court makes three principal issues which require determination, namely – (i) whether the defendant was contractually obligated to supply new linens rather than reused linens; (ii) whether the plaintiffs penalty calculation method and amount are valid; and (iii) whether the defendant's counterclaim for allegedly wrongful deductions has merit.

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A Analysis

The “New” Linen Requirement

[18] The central question is whether the defendant was required to supply new linens to fulfil the “five par level” requirement in the contract, or whether reused/existing linens were acceptable under the contractual terms.

[19] The plaintiff posits that the contract clearly required new linens, based on these arguments:

- (i) while the contract doesn’t explicitly use the word “baharu” (new), documents 8 and 8A, containing specifications, were intended for new linens when interpreted in their proper context;
- (ii) the defendant’s own correspondence acknowledges this obligation through multiple letters, including one dated 17 August 2016 requesting extension time to supply linens, another explicitly stating they would supply “100% keperluan linen baru, spesifikasi PPUKM,” and several requests for deadline extensions specifically for supplying new linens;
- (iii) the minutes from pre-contract meetings on 13 June 2016 and 9 August 2016 recorded discussions where both parties allegedly understood new linens were required;
- (iv) the substantial contract value (RM17,242,737.48) would make little commercial sense if it merely covered laundering existing linens rather than supplying new ones;
- (v) the defendant never disputed this interpretation until after penalties were imposed, suggesting their objection was an afterthought rather than their understanding during the contract execution; and
- (v) PW2 (Zuraidah), who chaired pre-contract meetings, testified that it was clearly communicated that new linens were required under the contract specifications.

[20] On the opposite spectrum, the defendant posits that they were not obligated to supply new linens based on these arguments:

- (i) the contract does not explicitly state the word “baharu” (new). Therefore, they argue they could use linens from other sources including KKM and the previous vendor (Time);
- (ii) they fulfilled the five par requirements by supplying a combination of new linens according to PPUKM specifications (50,841 pieces), existing PPUKM-specification linens from the previous contractor (47,880 pieces), and KKM-specification linens (24,569 pieces);
- (iii) the plaintiff’s inclusion of the word “baharu” in the subsequent tender document proves they recognised this term was missing from the original contract;

- (iv) while the defendant only formally objected to the “new linen” interpretation after penalties were imposed in May 2017, they maintain this timing doesn’t invalidate their position; and A
- (v) the formula used to calculate penalties (multiplying by days of delay) conflicts with the formula specified in the contract. B

Evidence Analysis

[21] All parties’ witnesses confirmed that the word “baharu” does not appear in the contract. The plaintiff’s key witness, SP1, who chaired the specifications committee, admitted that the contract doesn’t specify new linens and that if the defendant supplied existing linens from the previous contractor, it would satisfy the contract terms. C

[22] In the tender that followed this contract, the plaintiff explicitly added the word “baharu” in cl. 7.1 of the new contract, demonstrating they recognised this term was missing from the original contract. D

[23] The defendant contended that the plaintiff’s reliance on verbal agreements during site visits that required new linens violates the parol evidence rule under ss. 91 and 92 of the Evidence Act 1950 (EA 1950), preventing oral evidence from contradicting the written contract.

[24] The defendant also argues that under the G principle of *contra proferentum*, if the contract is ambiguous, it should be construed against the party who drafted it, here the plaintiff. The rule provides that where a term is ambiguous, such ambiguity should be construed against the party who prepared it. In general contracts, common law courts have quickly applied against ‘unfair terms’ like exclusion or exemption clauses (see: *Malaysian Motor Insurance Pool v. Tirumeniyar Singara Veloo* [2019] 10 CLJ 731; [2020] 1 MLJ 440). E

[25] It is evident that when the dispute is premised on the terms of the contract, the contract itself as a whole document must be considered including the factual matrix and background circumstances, business common sense, and commercial purpose. The court must take an objective approach to determining the parties’ intentions. F

[26] The outcome of the analysis of the evidence shows that the defendant’s arguments lack merit on the following grounds. In sequence of orders, the defendant’s own letters of correspondence, like the 17 August 2016 and 28 March 2017, acknowledge their obligation to supply new linens. G

[27] The minutes of the meetings before the execution of the contract, namely on 13 June 2016 and 9 August 2016, show that the parties understood that new linens were required. H

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- A [28] Moreover, the defendant did not bring their main witness, Tun Masri bin Abu Bakar, who signed off on their letters acknowledging the new linen requirements. Naturally, s. 114(g) of the EA 1950 would be invoked since no reason was given for the defendant not to call him to the stand. As such, the unfavourable outcome can be reasonably invoked for their failure to bring him.
- B [29] I thus find that despite the absence of the explicit word “new” term, ample evidence has been established by the plaintiff that both parties intended and understood that new linens were required and that the defendant’s own conduct and correspondence support this interpretation.
- C [30] Using the objective approach, the court analyses the contract as one whole document to ascertain the intention and understanding of the contracting parties in determining if the new linen is required or not. The facts of the execution of the contract, including the background circumstances leading to the same, had been considered and evaluated. The court finds that the business commences with the sense and commercial purpose of requiring new linens and not used ones.
- D [31] The defendant’s behaviour contradicts their current position. Suppose the used linens were acceptable to the plaintiff. In that case, it defies commercial logic that the defendant would supply a majority of new linens rather than used ones, repeatedly request extensions of time to fulfil the requirement for new linens, and willingly incur additional costs for new linens when used ones would have sufficed.
- E [32] Even if the defendant would be mistaken for new linen with clean linen, the words new and clean are unrelated and different. The defendant would have to supply clean linen without doubt, making it understood to mean clean linen. The same analogy is put in this case, where when the requirement is for the defendant to supply linen, the sensible and logical commercial meaning would refer to new linen and not used linen to be supplied to the plaintiff.
- F [33] I had gleaned from the contract and found other terms which the parties did not bring to the court’s attention, particularly cl. 36(a) and (b) of the contract on the plaintiff’s rights when the supply is defective or of low quality. The reference to defective and low quality would, to me, mean new linen. If it is meant for used and new linen, the terminology will not be of low quality since used linen has no quality.
- G [34] The principles of contractual interpretation are well-established. In *Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd* [2010] 1 CLJ 269; [2010] 1 MLJ 597, the Federal Court held that contracts should be interpreted by the parties’ objective intentions, considering not only the literal wording but also the surrounding circumstances and commercial purpose. This approach
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was further affirmed in *CIMB Bank Bhd v. Anthony Lawrence Bourke & Anor* [2019] 2 CLJ 1; [2019] 2 MLJ 1, where the Federal Court emphasised that contractual terms must be construed within their entire context.

[35] The Supreme Court in *Tindok Besar Estate Sdn Bhd v. Tinjar Co* [1979] CLJU 119; [1979] 1 LNS 119; [1979] 2 MLJ 229 held that the conduct of parties following the execution of a contract is highly relevant in determining their true intention. This is particularly pertinent in this case, where the defendant's post-contractual conduct evidences an understanding that new linens were required.

[36] The correspondence records prove that both parties understood the contract to require new linens. I am sure that the defendant knew from the start, after they signed the contract, that they must supply new linens. The perusal of their letters dated 17 August 2016, 30 November 2016 and 28 March 2017 all explicitly refer to the requirement to supply "new linens." Their letter stated their request for extensions of time specifically to fulfil the supply of new linens (see their letter dated 30 November 2016). Point 3 of the said letter fortified the defendant's awareness of their obligation under the contract to supply new linen since they had requested the plaintiff's approval for them to continue using the services of the former suppliers Salam Sinarmas Sdn Bhd and Time until they were able to supply fully (100%) of the demand for new linen of the PPUKM's requirement latest by 1 March 2017.

[37] In addition, the minutes from meetings held on 13 June 2016 and 9 August 2016 confirm both parties' understanding that new linens were required. Despite having over five representatives present at these meetings, the defendant failed to call any of them as witnesses to rebut this evidence. In *Lau Hee Teah v. Hargill Engineering Sdn Bhd & Anor* [1979] CLJU 40; [1979] 1 LNS 40; [1980] 1 MLJ 145, the Federal Court held that a party's failure to call material witnesses could lead to an adverse inference.

[38] As held in *Sharikat Pernborong Pertanian & Perumahan v. Federal Land Development Authority* [1969] CLJU 172; [1969] 1 LNS 172; [1971] 2 MLJ 210 OCJ, a party's commercial conduct is valuable evidence of their understanding of contractual obligations. In this case, the defendant only contested the "new linens" requirement after the plaintiff issued penalty demands, suggesting this defence.

[39] The defendant's argument that the parol evidence rule precludes consideration of pre-contractual negotiations must be rejected. While s. 91 of the EA 1950 codifies the English common law principle established in cases like *Goss v. Lord Nugent* [1833] 5 B & Ad 58, it operates on the fundamental premise that when parties have reduced their agreement to writing, the written document represents the complete and final expression

- A of their intentions. However, the rule does not prevent parties from introducing evidence about events after the contract was signed, such as subsequent modifications, performance or breaches.
- [40] The legal reasoning behind the parol evidence rule is the courts' commitment to preserving contractual certainty and protecting the integrity of written agreements (see: *He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal* [2020] 7 CLJ 271; [2020] 4 MLJ 662).
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- [41] The plaintiff had rightly pointed out the landmark case of *Kluang Wood Products Sdn Bhd & Anor v. Hong Leong Finance Bhd & Anor* [1999] 1 CLJ 1; [1999] 1 MLJ 193 where the Federal Court established that where a document is silent on a matter not inconsistent with its terms, the evidence of surrounding circumstances may be admitted. The salient judgment held:
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- The existence of any matter on which a document is silent and which is not inconsistent with its terms may be proved, and in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.
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- [42] This principle was previously applied in *Tan Chong & Sons Motor Company Ltd v. Yang Chin Lang* [1966] CLJU 193; [1966] 1 LNS 193; [1967] 1 MLJ 123 OJ, where oral pre-contractual representations were held admissible when they did not contradict the written terms. In *Otto v. Bolton* [1936] 2 KB 46 and *Miller v. Cannon Hill Estates Ltd* [1931] 2 KB 113, the courts similarly allowed parol evidence rule to establish implied terms that did not contradict express provisions.
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- [43] The parol evidence rule prohibits parties from introducing evidence of prior oral agreements, preliminary negotiations, or contemporaneous oral agreements when they contradict, modify, or supplement the terms of a final written contract. This rule promotes contractual certainty, prevents perjury, and encourages parties to include all essential terms in their written agreements. The courts apply this rule to preserve the integrity of written contracts and avoid the unreliability of oral testimony about past conversations.
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- [44] Under this rule, when a contract represents a complete and final expression of the parties' agreement, courts will generally not admit evidence of prior or contemporaneous oral agreements, written negotiations, or other extrinsic evidence that would contradict or modify the written terms. This applies to both parol (oral) evidence and written evidence that predates the final contract.
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- [45] However, the parol evidence rule is not absolute and has several recognised exceptions. The courts may admit extrinsic evidence to clarify ambiguous terms, prove fraud, duress, or mistake in the formation of the contract, establish conditions precedent that must be satisfied before the
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contract becomes effective, or demonstrate that a contract is partially integrated rather than completely integrated. Evidence may also be admitted to show subsequent modifications to the contract or to interpret technical terms that may not be clear from the written document alone.

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[46] Here, the contract is silent on whether linens must be “new.” The evidence of the parties’ understanding falls squarely within proviso (b) to s. 92 of the EA 1950 and therefore is admissible to establish this contractual requirement. Section 92(b) of the EA 1950 states the following:

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(b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved, and in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.

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[47] The subsequent correspondences, including the letters and meetings held, show that the defendant knew they were to supply new linens only. Subsequent conduct is particularly persuasive when representing a practical interpretation of contractual obligations long before any dispute arose. The defendant’s repeated acknowledgements of the obligation to supply new linens in correspondence with the plaintiff constitute compelling evidence of the parties’ common understanding.

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[48] The defendant’s conduct before this action strongly supports the interpretation that new linens were required. The defendant never clarified or even enquired if they were to supply only new linens or a mix of new and used linen. Only after the plaintiff levied the penalty payment demands did the defendant raise this issue of new linen, creating the afterthought.

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[49] It is an afterthought when the defendant surmised that the word “new linen” had been inserted in subsequent tenders and is irrelevant and misconstrued. I accept the evidence of SP2, who explained that the insertion of “new” to the linen clarifies the subsequent tenders that were improvements to the wording and not substantive changes to requirements. With that, I find that it is the parties’ common and agreed intention that the linen supplied is new.

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Validity Of Penalty Calculation

[50] On this next issue of the penalty charges, the defendant counterclaims that the penalty charges were wrong. Specifically, the defendant disputes the plaintiff’s claims for RM1,110,539.50 – penalties imposed on daily owing linens from September 2016 to September 2017 and RM2,533,132.75 – penalties imposed from January 2018 to July 2019, arguing that the plaintiff increased the 1-par level in the e-Laundry system without their knowledge.

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- A [51] The plaintiff countered these claims by showing that the contract terms permitted such an increase of the 1-par level – cls. 1.6, 2.6.1, 4.6, and 4.7 of Dokumen 8 explicitly stated that the plaintiff could increase linen requirements based on hospital needs and that the defendant knew of the e-Laundry system. SD3, the defendant’s Chief Linen Department from 2016-2019, admitted that e-Laundry was a standard system used by both parties and that the defendant had team leaders specifically assigned to monitor the e-Laundry system.

- B [52] The evidence proved that the defendant had no supporting documents to support their allegations. In contrast, the plaintiff had shown that the defendant only raised the objections to daily owing penalties after receiving UKM’s demand letter in May 2017, despite claiming penalties had been wrongfully imposed since September 2016. The first formal objection was made on 30 August 2017, despite claiming wrongful deductions since September 2016.

- C Detailed Analysis Of The Penalty Calculation Dispute

- D [53] The central dispute concerns the correct formula for calculating penalties for the defendant’s failure to supply adequate linens. The competing interpretations of the plaintiff are that the quantity of missing linen x price per sheet x number of days delayed, which resulted in a penalty claim of RM3,996,344.47.

- E [54] But, the defendant contended that to include the “number of days delayed” was improper and argued for a simpler formula of quantity of missing linen x price per sheet.

- F [55] The plaintiff gave compelling arguments for their calculation method. It is argued that cl. 4.3 of the contract states that penalties will be imposed on the insufficient sheets until the five-par requirement is fulfilled. The phrase “until the requirement is fulfilled” logically incorporates a time element. SP2 (Zuraidah) testified that this wording referred explicitly to the number of days delayed.

- G [56] An example where the “number of delays” is applied is in cl. 5.3 Dokumen 8 where the penalty was levied for items that are not replaced as per the requirements of cls. 5.2.1 and 5.2.2. The supply of linen by the defendant to PPUKM is continuous, and wherever there is a shortfall, the penalty is reasonably charged continuously until the shortfall is zeroed out.

- H [57] More importantly, the plaintiff demonstrated that this formula was applied consistently throughout the contract period without objection. SD2 admitted that the defendant never questioned the penalty calculation method until after they received the plaintiff’s demand letter dated 18 May 2017.

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[58] Moreover, SP4 confirmed that the plaintiff showed considerable leniency by applying the lowest price points for each linen category rather than varying prices by size. The effect is a significant reduction in the potential penalty from approximately RM7.021 million to only RM3,996,344.47. In addition, the plaintiff provided detailed calculations (see pp. 82-89 of bundle C2) documenting their methodology. These documents itemise each calculation component and demonstrate transparency in how the final figure was derived. Quoting the Federal Court in *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 9 CLJ 785; [2018] Supp MLJ 363 FC, it was emphasised that the credibility findings could not be severed from the documentary evidence.

[59] The court analyses the evidence and agrees with the plaintiff's argument because the contractual interpretation of the phrase "until the five par requirement is fulfilled" in cl. 9 of Dokumen 8 logically incorporates a time element, supporting the plaintiff's inclusion of "days delayed" in their formula. The penalty calculation served the legitimate commercial purpose of encouraging timely compliance with contractual obligations. The court found the plaintiff's calculation reasonable, properly documented, and consistent with contractual terms (see *Selva Kumar Murugiah v. Thiagarajah Retnasamy* [1995] 2 CLJ 374; [1995] 1 MLJ 817).

[60] The defendant failed to fulfil this obligation by not supplying the required quantity of new linens within the stipulated timeframe, materially breaching the contract.

[61] When a party seeks to challenge penalty calculations, they must provide timely objections and substantial evidence, not merely assert disagreement after penalties have been imposed. When evaluating penalty provisions, the court takes a practical approach to contractual interpretation, considering both the literal wording and the functional commercial context.

[62] The interpretation of penalty clauses focuses on the commercial purpose and parties' intentions. Post-contractual conduct (particularly the lack of timely objections) significantly determines parties' understanding of contractual terms.

[63] In *Johor Coastal Development Sdn Bhd v. Constrajaya Sdn Bhd* [2009] 4 CLJ 569; [2009] 4 MLJ 445, the court recognised no distinction between liquidated damages and penalties as understood under English law. Given s. 75 of the Contracts Act 1950 (CA 1950) which provides that in every case the court must determine the reasonable compensation, 'whether or not actual damage or loss is proved to have been caused thereby'. Further, in quoting Justice Peh Swee Chin FCJ in *Selva Kumar (supra)* quoted Thomson J from *SS Maniam v. The State of Perak* [1956] CLJU 112; [1956] 1 LNS 112; [1957] MLJ 75 OCJ:

In brief, in our law in every case if a sum is named in a contract as the amount to be paid in case of breach it is to be treated as a penalty is.

- A [64] These references establish that contractual clauses specifying sums to be paid upon breach are treated as penalties and are subject to s. 75 of the CA 1950, which requires proof of actual damage before enforcement.
- B [65] Following the Court of Appeal’s decision in *Zuraida Kamaruddin v. Saifuddin Nasution Ismail (Saman Sebagai Setiausaha Agung, Parti Keadilan Rakyat Untuk Dan Bagi Pihak Parti Keadilan Rakyat)* [2025] 2 CLJ 942; [2024] MLJU 3205 CA, while finding that the bond was breached, it ruled that the RM10 million penalty was unreasonable and disproportionate. In applying the principles from *Cubic Electronics Sdn Bhd (In Liquidation) v. MARS Telecommunications Sdn Bhd* [2019] 2 CLJ 723; [2019] 6 MLJ 15 and
- C *Cavendish Square Holding BV v. El Makdessi; ParkingEye Ltd v. Beavis* [2016] 2 All ER 519 SC, it is noted that a penalty clause must protect a legitimate interest and be proportionate to that interest.
- D [66] The penalty calculation serves the legitimate commercial purpose of encouraging timely compliance with contractual obligations. The calculation methodology is reasonable, transparent, and consistent with commercial practice.
- E [67] I find the penalty calculation reasonable, properly documented, and following the contractual terms. The total amount of RM3,996,344.47 is justified and supported by the evidence.
- The Wrongful Deductions Dispute*
- F [68] The issue of wrongful deduction is a significant dispute in the counterclaim where the defendant contended that the plaintiff wrongfully deducted payments for “daily owing linens.” The defendant’s arguments asserting that the plaintiffs’ deductions were wrongful are broken into the following areas of disputes.
- Specification Issues For Specialised Items
- G [69] The defendant claimed it couldn’t be penalised for failing to supply certain specialised linens because the specifications weren’t finalised until well after the contract started. On the OT Specialist Shirts and Pants, it was argued that penalties from September 2016 to July 2017 were invalid because the plaintiff only approved the change in specification from Intercooler Drill (which wasn’t available in the market) to TR Viscose on
- H 18 April 2017. The same was argued on the OT Gowns where it was maintained that penalties from September 2016 to September 2017 were improper since the plaintiff only approved the OT Gown design around 20 September 2017.
- I [70] The defendant found support from the plaintiff’s own witnesses where SP1 (being the chair of the specification preparation committee) admitted she hadn’t verified whether intercooler drill fabric was available in the market

before including it in specifications. Also, SP4 confirmed that the plaintiff didn't impose five-par penalties for OT specialist clothing and OT Gowns precisely because of specification issues.

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Unilateral Par Level Increases

[71] The defendant claimed that the plaintiff unilaterally increased the one-par level requirements in the e-Laundry system without proper notification. They presented calculations showing that the one-par level for certain items like bath towels was increased from 20 units (as per Dokumen 8A) to 108 units without notice. This allegedly resulted in improper "daily owing" penalties of RM2,084,512.90 between January 2018 and July 2019.

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Mobilisation Period Argument

[72] The defendant contended that no penalties should have been imposed during the first three months of the contract (from September until November 2016), which they characterised as a "mobilisation period": They argued that producing and supplying linens takes 30-60 days from the order date, making it unreasonable to impose penalties immediately. These improper deductions allegedly amounted to RM700,553.

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[73] Additionally, they argue that penalties for "daily owing linens" were unfair because they weren't given sufficient time during the mobilisation period, some specifications were only approved later in the contract and quantities were increased without proper notification.

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[74] The plaintiff's position is that the contract required new linens meeting PPUKM specifications. The defendant failed to supply five-par level of new linens by the extended deadline (28 February 2017). As such, the plaintiff is entitled to impose penalties as per cl. 4.3 of Dokumen 8, calculated as: quantity of linen x price per sheet x number of days delayed.

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[75] The plaintiff's rebuttals are premised on the contract and the e-Laundry system. The plaintiff emphasised that the contract explicitly permitted increasing linen requirements. cl. 1.6 of Dokumen 8 allowed the plaintiff to increase linen requirements based on patient numbers and bed increases. While cls. 2.6.1, 4.6, and 4.7 established the defendant's agreement to increase linens to fulfil the plaintiff's requirements at all times.

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[76] The plaintiff contends that they had demonstrated that the defendant had full knowledge of the system used to track linen requirements. It can be seen from SD3 (the defendant's Ketua Bahagian Linen from 2016-2019) who said that the e-Laundry system was common to both parties. She admitted that the defendant had 30 staff members in the linen department, including team leaders specifically assigned to monitor the e-Laundry system and receive complaints about it. Therefore, it is evident that the defendant had access to and monitored the system, undermining their claims about

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- A unilateral increases to par requirements. The shared system used by both parties undermines the defendant's claim that they were unaware of the requirement changes, as they had dedicated staff monitoring this system.
- [77] The plaintiff also highlighted that the defendant lacked any concrete evidence supporting the defendant's counterclaim *via* SD3, who admitted
- B under cross-examination that no supporting documents showed exactly what amounts were deducted. SD3 also revealed that the calculations she prepared were the defendant's retrospective internal documents, created only in 2022, after the case had commenced, and had not become contemporaneous records.
- C [78] The court's analysis of the wrongful deductions issue shows the plaintiff's arguments are of supported by the evidence. The burden of proof rests on the party asserting a claim. As established in *Selvaduray v. Chinniah* [1939] CLJU 107; [1939] 1 LNS 107; [1939] MLJ 253, a claimant must prove their claim on a balance of probabilities with credible evidence.
- D [79] The contract explicitly permits the plaintiff to increase linen requirements based on hospital needs, as evidenced by such terms (see pp. 87, 90, 96, and 97). In *Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd* [2010] 1 CLJ 269; [2010] 1 MLJ 597, the Federal Court emphasised that express contractual terms must be given their full effect.
- E [80] The defendant failed to meet the burden of proof necessary for their counterclaim, as no documentary evidence, such as payment records, invoices, receipts or accounting entries, was produced to support the alleged deductions. As held in *Silver Corridor Sdn Bhd v. Gallant Acres Sdn Bhd & Anor*
- F [2016] 7 CLJ 823; [2016] 5 MLJ 1, the court will draw adverse inferences against a party that fails to call key witnesses without explanation, especially when those witnesses had personal knowledge of the transactions, the witnesses were available but not called and the party provided no reason for their absence.
- G [81] SD3's admissions that her calculations were based on estimations rather than actual records significantly undermined the counterclaim. The calculations submitted were made very late and differed materially from the amounts pleaded, further reducing the credibility of her calculations. In *Wong Sin Chong & Anor v. Bhagwan Singh & Anor* [1993] 4 CLJ 345; [1993]
- H 3 MLJ 679, the Federal Court held that a party's witness contradicting the pleaded case weakened that case.
- [82] The defendant admitted in their submissions that the amount they pleaded differs from the amount calculated in their submissions. This inconsistency further undermines the reliability of the counterclaim, leading
- I to no evidence being established (see: *Tindok Besar Estate Sdn Bhd v. Tinjar Co* [1979] CLJU 119; [1979] 1 LNS 119; [1979] 2 MLJ 229).

[83] The court found that the plaintiff was contractually entitled to increase linen requirements based on hospital needs, as evidenced by multiple provisions in the contract.

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[84] The court determined that the defendant's contention that it was unaware of the requirement increase wasn't credible since they had full access to the e-Laundry system, which tracked requirements in real-time. They had their own staff who were specifically assigned to monitor the system.

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[85] The court noted that the timing of the counterclaim suggested it was a tactical response rather than a genuine grievance. Despite ample prior opportunity to object, it was only raised after the plaintiff's penalty claim. The inconsistencies in the amounts claimed further undermined credibility.

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[86] In light of these evidentiary deficiencies and inconsistencies, the defendant has failed to discharge its burden of proof in establishing its counterclaim. The court's application of the adverse inference of s. 114(g) of the EA 1950 allows courts to presume that evidence deliberately withheld would be unfavourable to the party withholding it. In *Tindok Besar*, this presumption was invoked correctly. The plaintiff appropriately invoked the same for the defendant's failure to call their witnesses who were directly involved in this matter at that material time.

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Conclusion

[87] For the reasons stated above, I find that the defendant breached the contract by failing to supply new linens as required, the plaintiff is entitled to impose the penalty as calculated, and the defendant's counterclaim is without merit. Accordingly, I allow the plaintiff's claim with costs for RM3,996,344.47 with interest at 5% per annum from the date of filing until full settlement. The defendant's counterclaim is hereby dismissed with costs.

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